

**REMARKS**

Claims 1-20 are pending in this application. By this Amendment, claims 1 and 18-20 are amended.

Support for the amendments to claims 1 and 18-20 can be found in the specification as originally filed, for example at page 28, lines 4-13. No new matter is added by this amendment.

Entry of the amendments is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance (for the reasons discussed herein); (b) do not raise any new issue requiring further search and/or consideration (as the amendments amplify issues previously discussed throughout prosecution); (c) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (d) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because they are made in response to arguments raised in the final rejection. Entry of the amendments is thus respectfully requested.

**I. Rejections under 35 U.S.C. §102(e)**

**A. Sasaki et al. '370**

Claims 1-14 and 18-20 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2003/0044370 to Sasaki et al. (hereinafter "Sasaki et al. '370"). The rejection is respectfully traversed.

The Patent Office alleges that Sasaki et al. '370 discloses all of the features recited in claims 1-14 and 18-20. Applicants disagree.

Nowhere does Sasaki et al. '370 disclose a resin powder having particles containing a resin, wherein the particles have undergone a reshaping treatment and the major axis, the minor axis and the thickness for the particles are as recited in claims 1 and 18-20.

Sasaki et al. '370 merely discloses a resin powder for a dermatologic composition with resin particles having an average volume particle size of 2.0 to 20.0  $\mu\text{m}$ , preferably 2.0 to 15.0  $\mu\text{m}$  (see paragraph 21). Sasaki et al. '370 also discloses that a cosmetic composition or skin cleansing composition containing resin particles having a particle size outside the above-described range is deteriorated in usability such as spreadability (see paragraph 21). As acknowledged on page 6 of the Office Action, Sasaki et al. '370 fails to disclose reshaping the particles by a treatment.

Attached is a Declaration under 37 CFR §1.132 illustrating that particles formed in accordance with the teachings of Sasaki et al. '370 (comparative resin powder A) fail to satisfy the projected particle dimension limitations, namely  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , as required in claims 1 and 18-20. As set forth in Table 1 of the Declaration, particles of resin powders formed in accordance with the teachings of Sasaki et al. '370 exhibit  $b/a = 1$  and  $c/b = 1$  which clearly fail to satisfy the claimed equations,  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , as specifically defined in claims 1 and 18-20.

Applicants assert that particles formed in accordance with the teachings of Sasaki et al. '370 exhibit ratios that clearly fail to satisfy the claimed equations because the particles have not been reshaped as the particles required in claims 1, 15 and 18-20. Therefore, contrary to the assertions of the Patent Office, Applicants submit that Sasaki et al. '370 fails to teach or suggest that when seen from a direction in which a projected area of the particle to a plane is maximum, the particles satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , where  $a$  is a major axis of each particle;  $b$  is a minor axis of each particle; and  $c$  is a thickness of each particle as required by claims 1 and 18-20.

Applicants further submit that the claimed powders and cosmetics would not have been obvious in view of teachings of Sasaki et al. '370 because unexpected results are obtained when the claimed resin powder was applied to the skin of twenty (20) panelists as

described in the Rule 132 Declaration. As summarized in the Rule 132 Declaration, the resin powder (preparation examples 1 and 2) with particles that satisfy the projected particle dimension limitations of the equations, namely  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , were unexpectedly improved in diffusing light on the skin in various directions so as to hide skin contour and dullness or blemish of the skin. Additionally, as illustrated by Tables 2 and 3 in the Declaration, the resin powder had a far superior hiding power to that of resin powder (comparative resin powder A) formed in accordance with the teachings of Sasaki et al. '370. Accordingly, Applicants submit that the results obtained from applying the claimed resin powders to the skin of the panelists are unexpected and unobvious in view of the teachings of Sasaki et al. '370.

In view of the foregoing, Sasaki et al. '370 fails to teach or suggest each and every limitation of independent claims 1 and 18-20. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

**B. Sasaki et al. '649**

Claims 1-14 and 18 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,893,649 to Sasaki et al (hereinafter "Sasaki et al. '649"). The rejection is respectfully traversed.

The Patent Office alleges that Sasaki et al. '649 discloses all of the features recited in claims 1-14 and 18. Applicants disagree.

Nowhere does Sasaki et al. '649 disclose a resin powder having particles containing a resin, wherein the particles have undergone a reshaping treatment and the major axis, the minor axis and the thickness for the particles are as recited in claims 1 and 18.

Sasaki et al. '649 merely discloses spherical resin particles that are blended which have a particle size, particle size distribution and shape factor within a certain range, and which comprise a resin whose glass-transition temperature and molecular weight are lower

than those of general-purpose resins (see col. 3, lines 20-26). Nowhere does Sasaki et al. '649 disclose that the particles are reshaped by treatment.

Applicants submit that particles formed in accordance with the teachings of Sasaki et al. '649 (see comparative resin powder B in the Rule 132 Declaration) fail to satisfy projected particle dimension limitations, namely the equations,  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , as required in claims 1 and 18. Particles of resin powders formed in accordance with the teachings of Sasaki et al. '649, exhibit ratios  $b/a = 1$  and  $c/b = 1$ , which clearly fail to satisfy the claimed equations as specifically defined in claims 1 and 18 (see Chart 1 of the Rule 132 Declaration). Therefore, Applicants submit that Sasaki et al. '649 also fails to teach or suggest that when seen from a direction in which a projected area of the particle to a plane is maximum, the particles satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , where  $a$  is a major axis of each particle;  $b$  is a minor axis of each particle; and  $c$  is a thickness of each particle as required in claims 1 and 18.

As set forth in Tables 2 and 3 in the Rule 132 Declaration, Applicants submit that the present resin powder (preparation examples 1 and 2) unexpectedly had a far superior hiding power to that of resin powder (comparative resin powder B) formed in accordance with the teachings of Sasaki et al. '649. Therefore, Applicants submit that the results obtained from applying the claimed resin powders to the skin of the panelists are unexpected and unobvious in view of the teachings of Sasaki et al. '649.

In view of the foregoing, Sasaki et al. '649 fails to disclose each and every limitation of independent claims 1 and 18, and thus cannot anticipate claims 1 and 18, or any of the additional features recited in the dependent claims thereof. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

## II. Rejections under 35 U.S.C. §103(a)

### A. Sasaki et al. '370 in view of Kinsho et al.

Claims 1-20 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Sasaki et al. '370 in view of U.S. Patent No. 7,005,480 to Kinsho et al. This rejection is respectfully traversed.

Neither Sasaki et al. '370 nor Kinsho et al, taken singly or in combination, teaches or suggests a resin powder having particles that have undergone a reshaping treatment and that satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$  as recited in claims 1 and 18-20. Moreover, neither Sasaki et al. '370 nor Kinsho et al, taken singly or in combination, teaches or suggests a process for preparing a resin powder having a step of subjecting the particles to a reshaping treatment, wherein when seen from a direction in which a projected area of the particle to a plane is maximum, the particles satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$  where a is a major axis of each particle; b is a minor axis of each particle; and c is a thickness of each particle as recited in claim 15.

The Patent Office admits that Sasaki et al. '370 fails to disclose reshaping the particles by a treatment. The Patent Office introduces Kinsho et al. to allegedly teach a step of subjecting the particles to a reshaping treatment. Contrary to assertions of the Patent Office, Kinsho et al. merely teaches resin dispersions having uniform particle diameters and methods for producing resin dispersions (see Abstract). In a method taught by Kinsho et al., resin particles may be produced by emulsion polymerization and dispersed using a Nanomizer (see col. 12, line 30 – col. 13, line 41, and col. 19, line 50 – col. 20, line 7).

Applicants submit that Sasaki et al. '370 and Kinsho et al., taken singly or in combination, fail to teach subjecting particles to a reshaping treatment and that when seen from a direction in which a projected area of the particle to a plane is maximum, the particles satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , where a is a major axis of

each particle; b is a minor axis of each particle; and c is a thickness of each particle as recited by claims 1, 15 and 18-20.

Applicants submit that particles formed in accordance with the teachings of Sasaki et al. '370 (comparative resin powder A in the Rule 132 Declaration), and Kinsho et al. (comparative resin powders C in the Rule 132 Declaration) fail to satisfy projected particle dimension limitations, namely the equations,  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , as required by claims 1, 15 and 18-20. As set forth in Table 1 of the Declaration, particles of resin powders formed in accordance with the teachings of Kinsho et al. exhibit ratios  $b/a = 1$  and  $c/b = 1$  that, like the particles of Sasaki et al. '370, clearly fail to satisfy the claimed equations,  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , as specifically defined in claims 1, 15 and 18-20. The particles taught in Kinsho et al. thus also do not satisfy the claimed equations of the present application. Therefore, Applicants submit that Sasaki et al. '370 and Kinsho et al., taken singly or in combination, fail to teach or suggest particles that have undergone a reshaping treatment and that when seen from a direction in which a projected area of the particle to a plane is maximum, the particles satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , where a is a major axis of each particle; b is a minor axis of each particle; and c is a thickness of each particle as required in claims 1, 15 and 18-20.

As illustrated by Tables 2 and 3 in the Declaration, Applicants submit that the present resin powder (preparation examples 1 and 2) unexpectedly had a far superior hiding power to that of the resin powder (comparative resin powder C) formed in accordance with the teachings Kinsho et al. Accordingly, Applicants submit that the results obtained from applying the claimed resin powders to the skin of the panelists are unexpected and unobvious from Sasaki et al. '370 in view of the teachings of Kinsho et al.

Since neither Sasaki et al. '370 nor Kinsho et al., taken singly or in combination, teaches or suggests each and every feature as claimed, the claims are patentably distinct over

the references. Accordingly, reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. §103(a) are respectfully requested.

**B. Kinsho et al.**

Claims 15-17 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Kinsho et al. The rejection is respectfully traversed.

As discussed above, nowhere does Kinsho et al. teach or suggest a process for preparing a resin powder having a step of subjecting the particles to a reshaping treatment, wherein when seen from a direction in which a projected area of the particle to a plane is maximum, the particles satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$  where a is a major axis of each particle; b is a minor axis of each particle; and c is a thickness of each particle as recited in claim 15.

As described above, Applicants submit that Kinsho et al. fails to teach a process or a step of reshaping particles of the resin powder as required by claim 15. Further, as set forth in the Rule 132 Declaration, the particles of the resin powder formed in accordance with the teachings of Kinsho et al. exhibit ratios  $b/a = 1$  and  $c/b = 1$  that fail to satisfy the claimed equations,  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , as specifically defined in claim 15. Additionally, the resin powder with particles that satisfy the equations  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$  unexpectedly is better in diffusing light on the skin in various directions to hide skin contour and dullness or blemish of the skin and in exhibiting a greater hiding power than resin powders formed in accordance with the teachings of Kinsho et al. Thus, Applicants assert that the results obtained from applying the claimed resin powders to the skin of the panelists are unexpected and unobvious in view of the teachings of Kinsho et al.

Because Kinsho et al. fails to teach or suggest each and every feature as claimed, claims 15-17 are patentably distinct over Kinsho et al. Accordingly, reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. §103(a) are respectfully requested.

**III. Rejection under the Doctrine of Obviousness-Type Double Patenting**

Claims 1-16 and 18 are rejected under the doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-3, 7-9, 15-16 of Sasaki et al. '649; and Claims 1-16 and 18-20 are provisionally rejected under the doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-2, 5 and 7 of Sasaki et al. '370.

For all the same reasons as disclosed above, the claims of neither Sasaki et al. '649 nor Sasaki et al. '370 teach or suggest a resin powder having particles that satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$ , wherein the major axis, the minor axis and the thickness for each particle are obtained from reshaping each particle by treatment as recited in claims 1 and 18-20. Nowhere do the claims of Sasaki et al. '649 and Sasaki et al. '370 teach or suggest a process for preparing a resin powder having a step of subjecting the particles to a reshaping treatment, wherein when seen from a direction in which a projected area of the particle to a plane is maximum, the particles satisfy the following equations:  $0.5 < b/a < 1$  and  $0.4 < c/b < 0.8$  where a is a major axis of each particle; b is a minor axis of each particle; and c is a thickness of each particle as recited in claim 15.

Because the claims of Sasaki et al. '649 and Sasaki et al. '370 fail to teach or suggest each and every feature as claimed, the claims are patentably distinct over the claims of each reference. Accordingly, withdrawal of the obviousness-type double patenting rejections is respectfully requested.

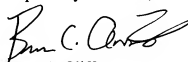
**IV. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-20 are earnestly solicited.



Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff  
Registration No. 27,075

Brian C. Anscomb  
Registration No. 48,641

JAO:BCA/hs

Date: December 15, 2006

**OLIFF & BERRIDGE, PLC**  
**P.O. Box 19928**  
**Alexandria, Virginia 22320**  
**Telephone: (703) 836-6400**

**DEPOSIT ACCOUNT USE  
AUTHORIZATION**

Please grant any extension  
necessary for entry;

Charge any fee due to our  
Deposit Account No. 15-0461